

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 804 – HB 937

February 18, 2014

**SUMMARY OF ORIGINAL BILL:** Prohibits the state from establishing, facilitating, implementing, or participating in any new expansion of the medical assistance program, also known as the Medicaid program, pursuant to the Patient Protection and Affordable Care Act, Public Law 111-148, as amended (the Act), as interpreted by the United States Supreme Court in *National Federation of Independent Business v. Sebelius*, to be unconstitutional when applied to the states as a mandatory expansion.

FISCAL IMPACT OF ORIGINAL BILL:

Forgone State Revenue - \$1,000,101,000/TennCare/FY14-15  
\$1,135,858,000/TennCare/FY15-16  
\$1,203,136,000/TennCare/FY16-17  
\$1,266,462,300/TennCare/FY17-18  
\$1,361,226,900/TennCare/FY18-19  
\$1,447,206,400/TennCare/FY19-20  
\$1,546,465,800/TennCare/FY20-21 and Subsequent Years

State Expenditures - Cost Avoidance - \$30,849,600/TennCare/FY16-17  
\$73,709,400/TennCare/FY17-18  
\$94,630,700/TennCare/FY18-19  
\$134,439,900/TennCare/FY19-20  
\$171,829,500/TennCare/FY20-21 and Subsequent Years

IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Impact – The estimated fiscal impact to commerce in the state as a result of the proposed legislation cannot be reasonably determined due to a number of unknown factors.

**SUMMARY OF AMENDMENT (012781):** Deletes all language after the caption and reinserts the enacting clause. Prohibits the Governor from making any decision or obligating the state in any way with regard to the expansion of optional enrollment in the medical assistance program, also known as the Medicaid program, pursuant to the Patient Protection and Affordable Care Act, Public Law 111-148 (the Act), as interpreted by the United States Supreme Court in *National Federation of Independent Business v. Sebelius*, to be unconstitutional when applied to states as a mandatory expansion, unless authorized by joint resolution of the General Assembly.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Other Fiscal Impact – The provisions of the bill as amended prohibit the Governor from expanding the Medicaid program pursuant to the Patient Protection and Affordable Care Act within the state without the passage of a joint resolution by the General Assembly. There is no way to predict if the Governor will choose to expand Medicaid or if the General Assembly will pass a resolution supporting such decision. Therefore, it is not possible to quantify an estimated fiscal impact of the proposed legislation. If the Medicaid population is not expanded, the estimated fiscal impact is unchanged from the corrected fiscal impact of the original bill. If the General Assembly chooses to pass a resolution to expand the Medicaid population, there will be revenue recognized from the federal government ranging from 1 to 1.5 billion dollars and state expenditures ranging from 31 to 172 million dollars depending on the date of enactment.**

Assumptions for the bill as amended:

- Title II, § 2001(a)(1) of the Act (42 U.S.C. § 1396a(a)(10)(A)(i)(VIII)), requires expansion of Medicaid coverage eligibility to adult individuals under the age 65, who are not pregnant or disabled, with income that does not exceed 133 percent of the federal poverty level (138% with the mandatory 5 percent income disregard). Under the Act, if a state chose not to expand coverage, then the state would not be compliant with 42 U.S.C. § 1396a and could lose Medicaid funding pursuant to 42 U.S.C. § 1396c.
- The United States Supreme Court held that the mandatory expansion of the population groups eligible for Medicaid coverage is unconstitutional in *National Federation of Independent Business v. Sebelius*. If a state chooses not to expand the state's Medicaid coverage to the newly eligible expansion population group, then the state will not jeopardize Medicaid funding for coverage of individuals eligible under federal law prior to enactment of the Act for that reason.
- Title II, § 2001(y) of the Act (42 U.S.C. § 1396d(y)), increases the Federal medical assistance percentage (FMAP) applied to spending by states that expand Medicaid coverage eligibility to the expansion population with respect to medical assistance provided to that population. In 2014, 2015, and 2016 the increased FMAP will be 100 percent.
- In 2017, the FMAP will decrease to 95 percent and the state will incur 5 percent of the costs. In 2018, the FMAP will decrease to 94 percent and the state will incur 6 percent of the costs. In 2019, the FMAP will decrease to 93 percent and the state will incur 7 percent of the costs. In 2020 and subsequent years, the FMAP will decrease to 90 percent and the state will incur 10 percent of the costs.
- According to the Bureau of TennCare (the Bureau), if Medicaid coverage eligibility is expanded in Tennessee, then there would be approximately 144,500 newly eligible TennCare enrollees in FY13-14 and approximately 161,900 newly eligible TennCare enrollees in FY14-15.
- The fiscal impact of the bill cannot reasonably be quantified due to several unknown factors including whether the General Assembly will authorize the Governor's choice to

expand Medicaid coverage and when such authorization might occur. According to the Bureau, if the state does not expand Medicaid coverage eligibility then the state will forego federal match revenues of \$418,207,600 in FY13-14 and \$1,000,100,900 in FY14-15.

- The following table provides a breakdown of the estimated total costs (based on a 6.7 percent inflation rate) between state and federal funds should the state choose to expand the Medicaid population under the Affordable Care Act:

Fiscal Year	Estimated Number of Enrollees	PMPM Cost	Total Cost	State Cost	Federal Cost
FY14-15	161,900	\$ 514.773	\$ 1,000,100,984	\$ -	\$ 1,000,100,984
FY15-16	172,300	\$ 549.361	\$ 1,135,857,972	\$ -	\$ 1,135,857,972
FY16-17	175,400	\$ 586.272	\$ 1,233,985,593	\$ 30,849,640	\$ 1,203,135,953
FY17-18	178,500	\$ 625.664	\$ 1,340,171,777	\$ 73,709,448	\$ 1,266,462,329
FY18-19	181,700	\$ 667.702	\$ 1,455,857,679	\$ 94,630,749	\$ 1,361,226,930
FY19-20	184,971	\$ 712.565	\$ 1,581,646,359	\$ 134,439,940	\$ 1,447,206,418
FY20-21	188,300	\$ 760.442	\$ 1,718,295,325	\$ 171,829,532	\$ 1,546,465,792

## IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

**Other Impact – The estimated fiscal impact to commerce in the state as a result of the proposed legislation cannot be reasonably determined due to a number of unknown factors.**

Assumptions for the bill as amended:

- Whether the state decides to expand the Medicaid population or not, there could be varying degrees of economic impact to the health care industry as a whole in the state of Tennessee including, but not limited to, health insurance companies, hospitals, clinics, healthcare facilities, individual health care providers, and pharmacists.
- According to the Bureau of TennCare, there are approximately 161,900 individuals who would be eligible for healthcare under the expansion.
- If the state chooses to expand Medicaid, these individuals would now be enrolled in TennCare and could receive health care services that they are not currently seeking which could result in increased business for health insurance companies contracted with the state and health care providers within the TennCare network.
- If the state chooses not to expand Medicaid, some of these individuals could obtain health insurance coverage through a private insurance company. These individuals would no longer be uninsured and could receive health care services that they are not currently seeking. Depending on the health status of these individuals, this could result in a positive or negative financial impact to the individual health insurance companies.

- Health care providers could incur economic impacts depending on the type of insurance and the medical coverage that is obtained by these individuals after receiving coverage versus the type of care the individual is receiving as an uninsured individual. Also, the cost for services can differ depending on health coverage, network discounts, etc.
- Due to a number of unknown factors which include, but are not limited to, the number of individuals who would obtain health insurance through the private sector, the health status of those individuals, the type of health insurance plan that would be offered, and the variation in costs for health care services, a reasonable estimate of the impact the proposed legislation may have on the healthcare industry is undeterminable.
- According to a study by Jackson Hewitt Tax Service dated January 26, 2014, there could be tax liability implications for companies with 50 or more employees that employee uninsured individuals on a full-time basis who earn between 100 – 138 percent of the federal poverty level (FPL). According to this study, it was estimated that 24,000 individuals Tennessee will be eligible for the premium assistance tax credits.
- Under the employer shared responsibility provisions in the Affordable Care Act, employers could pay up to \$3,000 in federal tax penalties for each full-time employee who enrolls in premium tax credits. The study estimates employers in Tennessee could pay between \$48,000,000 and \$72,000,000 in shared responsibility tax penalties.
- The study notes that data limitations required the researchers to make simplifying analytical assumptions that affect the specific point estimates reported.
- The study also notes that actual liabilities that employers incur will depend on the uptake or participation rates among eligible employees in the new premium assistance tax credit programs offered through the insurance exchanges.
- This estimate on the impact to commerce of the proposed legislation does not specifically identify an amount of tax liability to employers that could have a direct impact on commerce within the state. This estimate only acknowledges that it is a factor to determining the impact to commerce and jobs within the state resulting from the proposed legislation that cannot be reasonably quantified.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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